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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KAREN D. BANKS,

Plaintiff,

vs.

CLARK COUNTY DEPARTMENT OF
AVIATION,

Defendant.

Case No. 2:07-cv-0248-JCM-GWF

**ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS**

The matter before this Court is Defendant Clark County Department of Aviation's Motion to Dismiss Plaintiff Karen Banks' Complaint (#10), filed on September 11, 2007. Defendant seeks to dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted and for failure to exhaust her administrative remedies. Plaintiff responded to Defendant's Motion to Dismiss (#13) on September 18, 2007. Defendant submitted a Reply in Support of its Motion to Dismiss (#14) on October 2, 2007. On October 25, 2007, the Court held a hearing on the Defendant's Motion to Dismiss. Plaintiff, acting in proper person, did not attend the hearing.

DISCUSSION

In order to bring a claim pursuant to 42 U.S.C. § 2000e, *et. seq.*, in district court, a plaintiff must first exhaust her administrative remedies. 42 U.S.C. § 2000e-5(b); *B.K.B. v. Maui Police Department*, 276 F. 3d 1091, 1099 (9th Cir, 2002); *Sommatino v. United States of America*, 255 F.3d 704, 709 (9th Cir. 2001). Where the plaintiff has never presented a discrimination complaint to the

1 appropriate administrative authority, here the Nevada Equal Rights Commission or the Equal
 2 Employment Opportunity Commission, the Ninth Circuit has held that the district court does not
 3 have subject matter jurisdiction. *Sommatino*, 255 F.3d at 709 (citing *Blank v. Donovan*, 780 F.2d
 4 808, 809 (9th Cir. 1986)). In *B.K.B.*, the court highlighted that, "The administrative charge
 5 requirement serves the important purpose of giving the charged party notice of the claim and
 6 'narrowing the issues for prompt adjudication and decision.'" *B.K.B.*, 276 F. 3d at 1099.

7 Plaintiff did not comply with the administrative claim requirements of Title VII. Plaintiff's
 8 Charge of Discrimination, filed with the Nevada Equal Rights Commission on September 18, 2007,
 9 is insufficient to satisfy the procedural requirement. Plaintiff must exhaust her administrative
 10 remedies before she can properly pursue an action in this Court.

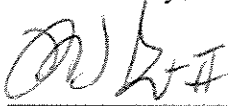
11 Further, Plaintiff has failed to state a claim upon which relief may be granted under 42
 12 U.S.C. § 1983. Accordingly, good cause appearing,

13 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is **granted** without
 14 prejudice and with leave to amend once Plaintiff exhausts her administrative remedies.

15 Dated: November 2nd, 2007

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 17 
 18 HONORABLE JAMES C. MAHAN
 19 UNITED STATES DISTRICT JUDGE

20
 21 Submitted by:

22 
 23 PATRICK H. HICKS, ESQ.
 24 ROGER L. GRANDGENETT, II ESQ.
 25 SHONDELLA L. MCCLELLAN, ESQ.
 26 LITTLER MENDELSON
 27 Attorneys for Defendant
 28

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169-5937. On October 31, 2007, I served the within document(s):

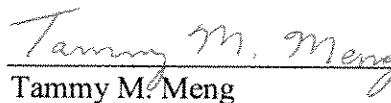
PROPOSED ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

- ☐ by facsimile transmission at or about _____ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Karen Banks
P.O. Box 11703
Las Vegas, NV 89111-1703

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 31, 2007, at Las Vegas, Nevada.



Tammy M. Meng